

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MULTI MEDIA ELECTRONICS, INC.,

Plaintiff(s),

REPORT AND RECOMMENDATION

-against-

CV 05-1946 (LDW) (ETB)

LUMIN ZONE INTERNATIONAL, INC.,

Defendant(s).

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TO THE HONORABLE LEONARD D. WEXLER, United States District Judge:

This is a patent declaratory judgment action initiated by the plaintiff, Multi Media Electronics, Inc., against the defendant, Lumin Zone International, Inc., a Hong Kong corporation, the owner by assignment of U.S. Patent No. 6,512,331 ("the '331 patent"). This action was commenced on April 21, 2005. The initial conference, wherein both parties appeared through counsel, occurred on September 12, 2005.

As a result of issues which were discussed at the initial conference related to the pendency of a reissuance proceeding - No. 10-936,656 - involving the '331 patent, both parties request that this action be administratively closed, pending the outcome of the reissue proceeding or two (2) years, whichever is earlier. The reason for this request is that the likely outcome of the pending proceeding before the Patent and Trademark Office will have a determinative impact on this action with respect to discovery, as well as the applicable law. To proceed with the action under these circumstances - where there is a likelihood of patent modification - will result in the expenditure of time and expense, which may have little, if any, value with respect to the ultimate resolution of this action.

RECOMMENDATION

At the parties' request I recommend that an order be entered directing the Clerk of the Court to administratively close this action until November 1, 2007 due to the pending reissue proceeding - PTO No. 10-936,656. Any party at any time prior to that date, by letter motion on notice to all parties, is authorized to make application to restore this action to the active docket.

This action shall be dismissed as of November 1, 2007, unless the closure is extended pursuant to a joint request to the court filed prior to the expiration date.

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Any objections to this Report and Recommendation must be filed with the Clerk of the Court with a copy to the undersigned within 10 days of the date of this report. Failure to file objections within the specified time waives the right to appeal the District Court's order. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993), cert. denied, 115 S.Ct. 86 (1994); Frank v. Johnson, 968 F.2d 298 (2d Cir.), cert. denied, 113 S.Ct. 825 (1992); Small v. Secretary of Health and Human Serv., 892 F.2d 15, 16 (2d Cir. 1989)(per curiam).

Dated: Central Islip, New York
October 20, 2005

/s/ E. Thomas Boyle
E. THOMAS BOYLE
United States Magistrate Judge